

**Letter of Findings Number: 09-0977P  
Sales and Use Tax – Negligence Penalty  
For the Periods 2006-2008**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration–Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**II. Tax Administration–Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the years 2006 to 2008. As a result of the Department's audit, the Department issued proposed assessments of use tax, interest, and penalties. Taxpayer protested only the penalties and interest.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the date of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration–Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on the use tax imposed as a result of the Department's audit.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer states that it was unaware that one retail merchant, along with out-of-state contractors, had not been collecting sales tax on hotel equipment and maintenance supplies. However, Taxpayer has had multiple late payments for various taxes prior to the audit period. Furthermore, even assuming Taxpayer's assertions are factually correct, Taxpayer has not demonstrated how its assertions demonstrate reasonable cause for not self-assessing use tax for the audit periods.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration–Interest.**

**DISCUSSION**

Taxpayer protests the imposition of interest with respect to its late payment of tax. For taxes unpaid by the due date for payment, IC § 6-8.1-10-1(b) provides for the imposition of interest. IC § 6-8.1-10-1(e), provides that the Department cannot waive interest.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is denied in full.

*Posted: 07/28/2010 by Legislative Services Agency*  
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